



**DEVELOPMENT OF NEW RULES AND AMENDMENTS TO 329 IAC 9 CONCERNING DELIVERY PROHIBITION REQUIREMENTS MANDATED BY THE UNDERGROUND STORAGE TANK COMPLIANCE ACT, PART OF THE ENERGY POLICY ACT OF 2005
#07-468(SWMB)**

Overview

The Indiana Department of Environmental Management (IDEM) has developed draft rule language for new rules and amendments to 329 IAC 9 concerning delivery prohibition at underground storage tanks mandated by the Underground Storage Tank Compliance Act, part of the Energy Policy Act of 2005.

Citations Affected

329 IAC 9.

Affected Persons

Underground storage tanks owners and operators.

Reason(s) for the Rule

The Federal Energy Policy Act of 2005 contains the Underground Storage Tank (UST) Compliance Act, which requires major changes to state UST programs. The original legislation that created the UST program is Subtitle I of the Solid Waste Disposal Act.

IDEM believes it currently has the authority to implement the fuel delivery prohibition program, however, going forward with this rule will provide clear, concise standards to help assure consistency.

Economic Impact of the Rule

There will be no fiscal impact to any regulated community or to IDEM.

Benefits of the Rule

This rulemaking is consistent with federal law and will allow IDEM to continue to receive federal funds for the underground storage tank program. This rule is also protective of the environment by not allowing a tank to receive more product if the tank is leaking.

Description of the Rulemaking Project

This proposed rulemaking addresses the fuel delivery prohibition requirement of the UST Compliance Act. On August 8, 2007, it was unlawful to deliver product to an ineligible tank. States, including Indiana, that receive federal funding under Subtitle I must implement the delivery prohibition requirement by August 8, 2007, to comply with their statutory requirements for funding. Section 1527(a) of the Energy Policy Act adds Section 9012 to the end of Subtitle I of the Solid Waste Disposal Act. The delivery prohibition requirement portion of this section prohibits the delivery,

deposit, or acceptance of product to an underground storage tank that has been determined to be ineligible for such delivery, deposit, or acceptance. The United States Environmental Protection Agency (U.S. EPA) or a state implementing agency determines eligibility.

Section 9012 also requires U.S. EPA to develop and publish guidelines that describe the minimum processes and procedures for the delivery prohibition. U.S. EPA published those guidelines in August 2006.

A state implements the Energy Act's guidelines by:

Having the authority to prohibit delivery, deposit, or acceptance of product to an underground storage tank for both equipment and operational violations; and

Developing processes and procedures for a delivery prohibition program that, at a minimum, meets the requirements in these guidelines. States may choose to be more stringent than these minimum requirements.

Scheduled Hearings

First Public Hearing: March 18, 2008, 1:30 p.m., Indiana Government Center South, Conference Center Room A.

Second Public Hearing: July 15, 2008, 1:30 p.m., Indiana Government Center South, Conference Center Room A.

Consideration of Factors Outlined in Indiana Code 13-14-8-4

Indiana Code 13-14-8-4 requires that in adopting rules and establishing standards, the board shall take into account the following:

- 1) All existing physical conditions and the character of the area affected.
- 2) Past, present, and probable future uses of the area, including the character of the uses of surrounding areas.
- 3) Zoning classifications.
- 4) The nature of the existing air quality or existing water quality, as appropriate.
- 5) Technical feasibility, including the quality conditions that could reasonably be achieved through coordinated control of all factors affecting the quality.
- 6) Economic reasonableness of measuring or reducing any particular type of pollution.
- (7) The right of all persons to an environment sufficiently uncontaminated as not to be injurious to:

- (A) human, plant, animal, or aquatic life; or
- (B) the reasonable enjoyment of life and property.

Consistency with Federal Requirements

This rulemaking is consistent with federal law.

Rulemaking Process

The first step in the rulemaking process is a first notice published in the *Indiana Register*. This includes a discussion of issues and opens a first comment period. The second notice is then published that contains the comments and the departments responses from the first comment period, a notice of first meeting/hearing, and the draft rule. The Solid Waste Management Board holds the first meeting/hearing and public comments are heard. The proposed rule is published in the *Indiana Register* after preliminary adoption along with a notice of second meeting/ hearing. If the proposed rule is substantively different from the draft rule, a third comment period is required. The second public meeting/hearing is held and public comments are heard. Once final adoption occurs, the rule must be approved by the Attorney General and the Governor. When approved, the rule becomes effective 30 days after filing with the Indiana Register.